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6 *Attorneys for Petitioners*

7
8 **IN THE UNITED STATES DISTRICT COURT**

9 **FOR THE DISTRICT OF NEVADA**

10
11 THE CHIPPEWA CREE TRIBE OF THE
12 ROCKY BOY RESERVATION OF
MONTANA; PLAIN GREEN, LLC; AND
13 FIRST AMERICAN CAPITAL
RESOURCES, LLC,

14 Petitioners,

15 v.

16 ENCORE SERVICES, LLC,

17
18 Respondent.

No. 2:14-cv-01294-JCM- PAL

**NOTICE OF NON-OPPOSITION TO
APPLICATION FOR CONFIRMATION
OF ARBITRATION AWARD AND
REQUEST FOR FINAL JUDGMENT**

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20 Petitioners the Chippewa Cree Tribe of the Rocky Boy Reservation of Montana (the
21 “Tribe”), Plain Green, LLC (“Plain Green”), and First American Capital Resources, LLC
22 (“FACR,” collectively with the Tribe and Plain Green, “Petitioners”) filed their Application for
23 Confirmation of Arbitration Award (“Application”) and supporting documents on August 7, 2014
24 [ECF No. 1], which was personally served on the Respondent Encore Services, LLC
25 (“Respondent”) on August 12, 2014 [ECF No. 9]. Under 9 U.S.C. § 6, Federal Rule of Civil
26 Procedure 6, 7, and 12, and Local Rule 7-2, Respondent was required to respond to the
27 Application by September 2, 2014 but failed to do so. *Id.* In addition, more than three months
28

1 have elapsed since the date of the Final Award, which was awarded on July 31, 2014. Therefore,
2 Respondent is time-barred from seeking vacation, modification, or correction of the Final Award
3 under 9 U.S.C. § 12.

4 In light of the foregoing, Petitioners respectfully request the Court to confirm the Final
5 Award and enter Final Judgment in favor of Petitioners and against Respondent for the principal
6 sum of \$1,181,128.79, plus costs of \$34,469.46 and attorneys' fees and costs of \$1,355,054.90,
7 for a total award of \$2,570,653.15. Petitioners request the Final Judgment incur interest as
8 provided by law from July 31, 2014 until paid in full. A Proposed Order Granting Application for
9 Confirmation of Arbitration Award and Final Judgment is attached hereto as **Exhibit 1**.

10 Dated: November 25, 2014

SNELL & WILMER L.L.P.

11
12 By: /s/ Karl O. Riley

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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2014, I electronically transmitted the foregoing
**NOTICE OF NON-OPPOSITION TO APPLICATION FOR CONFIRMATION
OF ARBITRATION AWARD AND REQUEST FOR FINAL JUDGMENT** to the Clerk's
Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all
counsel in this matter; all counsel being registered to receive Electronic Filing.

I further certify that on November 25, 2014, I served the foregoing by U.S. Mail, postage
prepaid, upon:

Zachary Roberts
Gordon Jones
Encores Services, LLC
1291 Galleria Drive, Suite 210
Henderson, Nevada 89014

/s/ Jeanne Forrest
An employee of Snell & Wilmer L.L.P.

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EXHIBIT 1

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6 **IN THE UNITED STATES DISTRICT COURT**

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8 **FOR THE DISTRICT OF NEVADA**

9 THE CHIPPEWA CREE TRIBE OF THE
10 ROCKY BOY RESERVATION OF
11 MONTANA; PLAIN GREEN, LLC; AND
12 FIRST AMERICAN CAPITAL
13 RESOURCES, LLC,

14 Petitioners,

15 v.

16 ENCORE SERVICES, LLC,

17 Respondent.

No. 2:14-cv-01294-JCM- PAL

18
19 **ORDER GRANTING APPLICATION**
20 **FOR CONFIRMATION**
21 **OF ARBITRATION AWARD AND**
22 **FINAL JUDGMENT**

23 The Court has before it Petitioners the Chippewa Cree Tribe of the Rocky Boy
24 Reservation of Montana's (the "Tribe"), Plain Green, LLC's ("Plain Green"), and First American
25 Capital Resources, LLC's ("FACR," collectively with the Tribe and Plain Green, "Petitioners")
26 Application for Confirmation of Arbitration Award ("Application") and their Notice of Non-
27 Opposition to the Application for Confirmation and Request for Final Judgment ("Non-
28 Opposition") [ECF No. ____].

I.

On or about June 2011, Petitioners, Respondent Encore Services, LLC ("Respondent"),
and Omatopia Financial Services, LLC ("OFS," collectively with Petitioners and Respondent, the

1 “Parties”) entered into the “Fee Agreement” in order for Respondent to provide certain services to
2 help Petitioners and OFS conduct a lending business. Under the Fee Agreement, the Parties
3 agreed to arbitrate any dispute in Las Vegas, NV under the rules of the American Arbitration
4 Association by one arbitrator. The Parties also agreed that judgment “entered upon the
5 [arbitration] award rendered may be enforced by appropriate judicial action.”

6 On or about September 18, 2013, Respondent filed a Demand for Arbitration with the
7 American Arbitration Association (“AAA”) against Petitioners alleging breach of Fee Agreement,
8 breach of the implied covenant of good faith and fair dealing, conversion, unjust enrichment,
9 accounting, civil conspiracy, declaratory relief, and attorney’s fees. Petitioners filed
10 Counterclaims against Respondent alleging fraud, civil conspiracy, intentional and negligent
11 misrepresentation, breach of fiduciary duties, negligence, unjust enrichment, conversion, punitive
12 damages and attorney’s fees and costs.

13 After holding an evidentiary hearing, on July 31, 2014, the Arbitrator issued a “Final
14 Award” finding Respondent liable to Petitioners in the principal amount of \$1,181,128.79, plus
15 costs of \$34,469.46 and attorneys’ fees and costs of \$1,355,054.90.

16 The Arbitrator’s Final Award found that the Petitioners have proven by clear and
17 convincing evidence that the Fee Agreement was induced by fraudulent or material
18 misrepresentations by the principals of Encore Services, LLC, which include Zachary Roberts,
19 Richard Lee Broome, Martin Mazzara, and Gordon Jones. The Arbitrator’s Final Award found
20 that it was undisputed that one portion of the Fee Agreement was false and intended to deceive,
21 and that Encore Services, LLC and its principals, Zachary Roberts, Richard Lee Broome, Martin
22 Mazzara, and Gordon Jones knew that this was false, and that Encore’s receipt of a significant
23 portion of its fee was not compensation to Encore Services, LLC. The Arbitrator’s Final Award
24 found that Encore served as a conduit for hidden kickback payments to Ideal Consulting, LLC
25 and Zachary Roberts, Richard Lee Broome, Martin Mazzara and Gordon Jones knew that the Fee
26 Agreement was based on concealment and hiding the truth.

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1 The Arbitrator's Final Award found that the Fee Agreement was a fraudulent and material
2 misrepresentation by Encore Services, LLC, through Zachary Roberts, Richard Lee Broome,
3 Martin Mazzara, and Gordon Jones, and was made with knowledge that it was false and with the
4 intent to deceive the Petitioners. The Arbitrator's Final Award found that Encore Services, LLC,
5 through the conduct of its principals, Zachary Roberts, Richard Lee Broome, Martin Mazzara,
6 and Gordon Jones, committed fraud, civil conspiracy, intentional and negligent misrepresentation,
7 and breaches of fiduciary duties, and negligence.

8 II.

9 The Federal Arbitration Act, 9 U.S.C. § 1-14 ("FAA"), provides that a court must grant
10 an application to confirm an arbitration award brought within one year after the award is made
11 "unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this
12 title [9 U.S.C. §§ 10, 11]." 9 U.S.C. § 9. The FAA itself is not a grant of jurisdiction; therefore, a
13 district court may confirm arbitration awards brought under 9 U.S.C. § 9 so long as there is an
14 independent jurisdictional basis. *General Atomic Co. v. United Nuclear Corp.*, 955 F.2d 968, 970
15 (9th Cir. 1981). This Court has jurisdiction under diversity jurisdiction under 28 U.S.C. § 1332.

16 Petitioners filed its Application on August 7, 2014, within one year of the July 31, 2014
17 Final Award. Under the Fee Agreement, "[a]ny controversy arising out of or related to this Fee
18 Agreement or the breach thereof shall be settled by arbitration in Las Vegas, Nevada, in
19 accordance with the rules of the American Arbitration Association, and judgment entered upon
20 the [arbitration] award rendered may be enforced by appropriate judicial action." Appl., ¶¶ 11-12.

21 Petitioner the Tribe of the Rocky Boy's Reservation of Montana is a federally-recognized
22 Indian tribe with a reservation located in Montana; governed by an elected Business Committee,
23 also referred to as the Tribal Council, with its headquarters in Box Elder, Montana. *Id.*, ¶¶ 1-2.
24 For purposes of this litigation only, the Tribe is a citizen of the state of Montana. *Id.*, ¶ 2.
25 Petitioner Plain Green is a limited liability company owned by the Tribe and formed to provide
26 short-term installment loans, with its headquarters and principal place of business located in Box
27 Elder, Montana. *Id.*, ¶ 3. Petitioner FACR is a limited liability company owned by the Tribe and
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1 formed to operate a loan business which is managed by an entity operated by Zachary Roberts,
2 Richard Lee Broome, Martin Mazzara and Gordon Jones, with its headquarters and principal
3 place of business located in Box Elder, Montana. *Id.*, ¶ 4. Respondent is a Nevada limited
4 liability company with its headquarters and principal place of business located in Clark County,
5 Nevada. *Id.*, ¶ 5. The managing members of Respondent are Zachary Roberts, Richard Lee
6 Broome, and Martin Mazzara. *Id.*, ¶ 6. Roberts and Mazzara are citizens of Nevada, and Broome
7 is a citizen of California. *Id.* None of the managing members are citizens of the State of
8 Montana. *Id.*

9 Petitioners were awarded in excess of \$2 million in arbitration. *Id.*, ¶ 17. Therefore, an
10 independent jurisdictional basis exists to confirm the award under diversity jurisdiction under 28
11 U.S.C. § 1332.

12 III.

13 The time to respond to an application to confirm an arbitration award is the same time as
14 responding to a motion. FED. R. CIV. P. 81(a)(6)(B) states that the Federal Rules of Civil
15 Procedure govern arbitration, except as otherwise provided in the FAA. An application to
16 confirm arbitration award is treated as a motion. 9 U.S.C. § 6. Thus, Respondent's response was
17 due by September 2, 2014. Local Rule 7-2(d) provides that failure to file and serve a response
18 may be deemed consent to granting the Motion. Respondent failed to file any response to
19 Petitioners' Application, and therefore confirmation is appropriate. In addition, more than three
20 months have elapsed since the issuance of the July 31, 2014 Final Award. Therefore, Respondent
21 is time-barred from seeking vacation, modification, or correction of the Final Award under 9
22 U.S.C. § 12.

23 IV.

24 Having found this Court has jurisdiction to confirm the Final Award and that 9 U.S.C. §
25 9's requirements are met, the Court grants Petitioners' Application.

26 For these reasons, IT IS ORDERED that Petitioners' Application to Confirm Arbitration
27 Award is GRANTED.
28

1 IT IS FURTHER ORDERED that JUDGMENT be entered against Respondent Encore
2 Services, Inc. for the principal sum of \$1,181,128.79, plus costs of \$34,469.46 and attorneys' fees
3 and costs of \$1,355,054.90, for a total award of \$2,570,653.15 to incur interest as provided by law
4 from July 31, 2014 until paid in full.

5 **IT IS SO ORDERED.**

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8 DATE: December 19, 2014


UNITED DISTRICT COURT JUDGE

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10 19861846